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ABSTRACT

This paper on licensing fees for information services begins by defining the concept of a license and poses the question of whether licenses are "friends or foes." License differences between the traditional paper and electronic worlds are summarized, including issues related to copying, transmission and publishing, prevention of illegal copying, integrity and paternity, and problems of transformation, translation, and adaptation. Legislation in some countries permitting material to be copied for the benefit of VIPs is also addressed. The following benefits of licenses are listed: establish a proper relationship between owner and user; avoid ambiguity; can free the user to do many things that would not be permitted otherwise; allow both owners and users to reach parts of the market that would otherwise be closed to them; and put VIPs on the same footing as other member of society. The following drawbacks are presented: licenses need agreement; owners may limit the forms of output for electronic materials and require extra payment for other formats; owners may refuse to grant a license; owners may use licenses to avoid the privileges given to various groups under national law; and levels of license fees are difficult to negotiate. Finally, the question of who pays for access to materials for many groups in society is considered. (MES)

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Licence fees: barrier or opportunity for access to electronic content?

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Poles apart?

Licensing fees are always an emotive topic. On the one hand they conjure up images of extortionate sums being demanded by owners from people unable, let alone unwilling, to pay. They are demonised as denying people access to information and creating deliberate obstacles to the free flow of information. On the other hand, they are viewed by many people as simply an alternative mechanism for recouping their financial investment in the preparation and marketing of an expensive and valuable product, the very creation of which is seen as a risk as its viability and financial worth are far from certain or predictable.

Somewhere between these to polarised views we should find the real situation and be able to work with that for the benefit of everyone. This is a general truism and not applicable only to those with visual impairments of one kind or another who need to use copyright material.

The idea of a licence

First of all it is necessary to understand just what is meant by a licence as a general concept. Different legislations will define licences differently but the underlying idea is that the owner of something agrees with another person terms under which that person may use the thing in specified ways for a specified length of time in return for a specified compensation which is usually, but not exclusively, money but may also be simply that the thing is used only in specific ways or in particular circumstances. Whereas, when something is *sold* the owner relinquishes all control over the object, when it is *licensed*, then the owner retains an element of control. It may seem trivial to go back to such basics but, unless we do, we run the danger of getting all emotional rather than seeking rational arguments for and against any given situation.

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The thing licensed may be a purely physical object or it can be intellectual property. Sports shops hire out bicycles, garden centres hire out equipment for digging, and manufacturers of many products hire out their trade marks to enable products to be made according to strict guidelines in countries other than their own. *Guinness* is a good example of this in more ways than one. In all these examples the owner retains some control and ultimate ownership.

Viewed from this angle, licences in the library and information world go back a very long way. The first public library established in the UK in 1850 lent out its books. In this respect the users of the library were licensed to use them but the public library retained ownership and control. They should not be mistreated, must be returned within a specified time and so on. Failure to observe these rules meant trouble for the user as the library still retained ultimate ownership of the book. Lending of this type is commonplace world-wide and a very common form of licence about which few people think twice. In a more specialised area, many music publishers deliberately avoid publishing orchestral sets of scores. For all kinds of reasons, some admirable, others not, these publishers prefer to hire out the sets for performances but never make them available for sale. Therefore they retain, once again, control over the works concerned.

Licences - friends or foes?

The rather superficial answer to this question is that it depends on whether you are the licensor (the person offering the licence) or licensee (the person taking out the licence)! But this is to see licences in the way described at the beginning of this paper. In fact, because they represent an agreement between owner and user they ought to be seen in a much more positive light as they should signify some kind of working relationship between the two. So why are they seen as so often contentious rather than harmonious? Some of the answers to this question can probably be found in mutual misunderstandings and mismatch of expectations. So it may be worth exploring some of these to see where the truth really lies.

Is the electronic world different?

Licences have existed for a long time in the traditional paper world so is the electronic world any different? From a legal point of view the answer is "probably not". From a practical standpoint it is a totally different environment. I think we all know the differences but it may be worth rehearsing some of them for the sake of clarity.

- Firstly, the question of copying. Copying in a purely physical world usually results in an inferior product being produced which rapidly degrades as further copies are made from it. Copying always costs in terms of time, effort and consumables. This results in a built-in and self limiting copying possibility. In an electronic world such copies can be made endlessly without loss of quality and at very little actual cost.
- Secondly, transmission and publishing. In the physical world there are real costs in transferring a copy from A to B in terms of actual transportation, time and packaging. In an electronic world copies can be sent instantly to anywhere in the world for the cost of a telephone connection and with no use of packaging or other materials. Unlimited retransmission is also equally possible. However, it should be noted, as with many areas of electronic transmission, that the costs of producing a permanent copy for the user is transferred from the publisher or owner to the user. We all now use large quantities of paper and ink, besides materials for other forms of output, simply to achieve what we used to buy direct from the publisher!
- Thirdly, Prevention. Stopping illegal copying is hard in the physical world. Nobody can stand over every photocopy machine, microfilm camera or painter's canvas to make sure only original works are being created or all copying is within the limits of the law. Neither is it really technically possible to stop copying by using various chemical or other techniques to build in anti-copying devices into the works themselves. The only way to make such actions legitimate is the "blanket" licence or recording of individual copying actions for which billing will subsequently take place. Blanket licences are blunt instruments that rarely reward accurately all those whose works are copied and individual recording systems are open to abuse, avoidance and neglect.

On the other hand, in the electronic world, it is quite possible to prevent copying and transmission and also to devise mechanisms of payment for such actions so that they are individually monitored and accurate payments can be collected and paid to the owners. Whilst circumvention is not impossible, it is quite difficult and the effort required may not be worth the copying fees avoided. This is equally true for copyright owners - elaborate systems for protection may be very efficient but so expensive they cancel out the economic benefit of preventing the copying. In other words, the value of copying must be greater than the cost of protection. Detailed models for electronic copyright management have been devised[1] but there is so far no example of all the requirements being implemented in any one actual system.

- Fourthly, integrity and paternity. In a physical world it is difficult, though not impossible, to change the content of a document. It is equally difficult to disguise its origins unless some sophisticated system of "cut-and-paste" is used. The best (or worst) than can be done is to remove the indication of the source. In an electronic context both of these actions are easy to perform. It is equally essential that they are prevented so that users know exactly what they are using and owners and creators are assured of the reputation of their products.
- Fifty, the problem of transformation, translation and adaptation. In the physical context it is comparatively difficult to carry out these actions and converting a text into a sound recording, three-dimensional form of expression or any other form is a complex and expensive business. In the electronic environment, it is very easy to achieve. If a work is "born digital" it can easily be converted into any output form the operator chooses; if the work is in original paper form then high quality scanning can soon convert it to the necessary format to be converted once again to another format as required.

Relevance to VIP's

Do all of these areas have relevance to VIP's and, if so, are they serious threats to owners or impediments to users? If the answer is generally "no" then why bother with licences at all? On the other hand, if the answer is generally "yes" then we need to consider the idea of a licence seriously. It must also be remembered that different needs of VIP's must be met by different processes and technologies so that the answer will rarely be simple.

- Firstly, copying. Clearly VIP's need to copy material either to produce a straightforward facsimile copy in large print or to digitise the work in order to output the text in whatever form is needed by the user.
- Secondly, transmission and publishing. Generally speaking VIPs do not have a need to publish material in the sense of making it generally available to the public. They may have a need to generate multiple copies but this would usually be within a named or easily identified community. However, transmission may well be a need in a modern context as, once a work has been digitised there is no point in using that version to produce, say, a Braille copy which then has to be posted from one user to another. It is just as easy to send the digital file to the user who may choose the form of output needed. This assumes, of course, that the user, or the instituti9on which supports them, has the relevant technology in the first place. This is an assumption which cannot be made in the majority of cases.
- Thirdly, Prevention. When considering texts in physical format the likelihood of unauthorised actions to a work are very small. Probably the most vulnerable will be seen as sound recordings. Therefore any prevention of further copying or transmission hardly arises. In any case, most sound systems for VIPs are specially designed for their use and not available to the general public. Whilst there is no evidence to show that VIPs are any better (or worse) than the general public in respecting/ignoring copyright, there is no reason to suppose that VIPs as such are likely to abuse their access to electronic materials. Nevertheless, it must be acknowledged that, once a work has been digitised, it is far more vulnerable to the infringements mentioned above than a physical version. Such files are often more

accessible and more easily used by others than physical documents. A digital file is a digital file and the purpose for which it was created is of little importance to the potential infringer.

- Fourthly, integrity and paternity. VIPs are most unlikely to want to interfere with either the content or indication of original of any document; on the contrary they will want guarantees that the text they use is as it was written originally and has not been tampered with by intermediaries who have, perhaps unwittingly, abridged the text or misread a word or scientific symbol. At the same time owners and authors will be anxious about exactly the same problem.
- Fifthly, the problem of transformation, translation and adaptation. This is perhaps one of the most controversial areas because this is exactly what VIPs need to do most often. Whilst making a copy in large print is clearly copying, converting a work to Braille or Moon or into an audio format is definitely adaptation. In some countries, using a work to make another work is not seen as an infringement but in many others this would clearly be treated as such. Whilst most owners would want to control translation or adaptation when seen as from one language to another or from a book to a play, the same threats can hardly be said to exist in the highly specialised realms of VIP needs. However, the technology to be used to achieve these adaptations is just as threatening for owners as mentioned earlier.

Licence or law?

Many countries do provide legislation which allows material to be copied for the benefit of VIPs. This is very useful but it is not necessarily a solution to many of the problems faced by those who need, or need to provide, material in alternative formats from those in which works originally appear. It can be limited by the amount of re-formatting that is allowed, the formats in which it can be produced, the person to whom it is available and, above all, is often open to challenge on various legal grounds. It leaves all those concerned with a feeling of uncertainty and some animosity as owners usually resent having such limits imposed on them, even if they would be entirely willing to licence such actions under the same terms as the law permits. In other words, owners feel they should be able to control their property and not have it forcibly given away for them.

There is another aspect of relying too much on the law. The law, because it is somewhat arbitrary in nature, will either allow reproduction in another format without compensation to the owner or it may set levels of compensation against which neither party can appeal. This puts the VIP in the situation of relying on a sort of state arranged handout and can be seen as degrading by a community which is quite capable of standing on its own two economic feet. VIPs do not want charity - they want equality.

Benefits of licences

Given this analysis, it is fairly obvious there could be a case for licences for VIPs to convert material into different formats. So what are the benefits?

- Firstly, licences establish a proper relationship between the owner and the user. By doing this, users can often build on this to ensure a better service for themselves or their users because the element of trust established between owner and user gives both confidence to suggest new areas of working together and can lead to some relaxation of the legal and binding agreements between them.
- Secondly, licences avoid ambiguity. Although the law in many countries gives certain privileges to VIPs, it is often vague or ill-defined and leaves many areas of uncertainty. A proper licence will spell out who can do what with what and for whom and in return for what payment (if any)
- Thirdly, licences can free the user to do many things which would not be permitted otherwise. Laws are fine as far as they go but the exceptions they set out are always limited and may not fully meet the needs of the VIP community.
- Fourthly, they allow both owners and users to reach parts of the market which would otherwise be closed to them. Owners wish to sell their products and users wish to buy them but the electronic delivery of information should allow the special formats needed by VIPs to be produced without any

additional cost to the owner. VIPs should not be prevented from having access to works just because the standard output is not in the right format but neither do VIPs wish to be on the receiving end of charity. They are willing to pay the normal market rate for material provided they can access it properly. At the same time owners do not see why they should be denied access to a potential legitimate revenue stream. In the physical world the debate is compounded by the problem of who will pick up the bill for reformatting material. In the electronic world this problem is still there because re-formatting requires advanced technology and production equipment but the burden is moved from the supplier to the user. Therefore owners should have no anxieties about allowing output of electronic materials in different formats.

- Fifthly, they put VIPs on the same footing as other members of society. Everyone obtains their electronic information through some form of licence. The VIP becomes just the same as everyone else but with slightly different licensing terms, tailored to meet their needs.

Drawbacks of licences

- Firstly, licences need agreement. This can cause a bureaucratic bottleneck in accessing material. The owner needs to have a licence in place and the user needs to be able to locate it. Both can cause delays which is to the disadvantage of the VIP if these procedures take longer or are more complex than for use by fully sighted people.
- Secondly, the owner may limit the forms of output for electronic materials and require extra payment if other formats are required. Such additional fees can be a major charge for the VIP, making access to material far more expensive for the VIP than for other users. Fees ought to be set at the same level for all users with no additional charge where output in special formats is required.
- Thirdly, the owner may refuse to grant a licence. Although this would seem unlikely to many people such refusal is more common than is often realised. Some owners of electronic resources are prepared to licence on-screen viewing only with printing out as an option in return for additional payment. This clearly discriminates against the VIP who will usually need to produce some kind of output rather than attempt to use material on-screen. Nevertheless some owners feel the need to be in control. Even if they are happy to allow output in many different formats at no charge to anyone, they still want the opportunity to agree or not. They strongly resent having their rights managed for them by some kind of compulsory licence even thought they think the terms imposed are reasonable and acceptable.
- Fourthly, owners may use licences to avoid the privileges given to various groups under national law. If VIPs (or any other groups) are given privileges to do various acts to copyright material without infringing the owners rights, they should ensure that these are not signed away in some form of licence or contract with the copyright owner. Unfortunately it is possible for this to happen without the user actually realising that such privileges have been lost.
- Fifthly, levels of licence fees are difficult to negotiate. Owners often take a "take it or leave it" approach to licences which may not be appropriate to VIPs (or others). There is often little room for negotiation which may result in fees that are far too high for the special requirements of different groups.

Who pays?

The whole question of who pays for access to materials for many groups in society is a controversial topic and not limited to VIPs so it is not appropriate or necessary to rehearse the whole argument here. Suffice to say that most people would agree that access to materials for VIPs should be on the same basis as regards time and money and under the same conditions as for any person entitled to access that material. There is an on-going debate about whether such costs should be met by the person concerned, the library or some other authority such as the local town administration, national social services departments or charitable organizations. This debate relates to the whole question of such concepts as "fair use" or "fair dealing" and is relevant to this discussion in those wider terms.

Conclusion

Licence fees can be both a barrier and an opportunity for VIPs and others. With proper; management and reasonable terms they can be the gateway to dynamic and rewarding services and give a chance for owners and users to work together for their mutual benefit. Badly constructed licences will always be a barrier to access and eventually will deny owners much of the revenue stream that they desire from such arrangements. They can clarify ambiguous legal situations and avoid unnecessary conflict but the terms may be onerous and seem unreasonable. Ideally what is needed is a licence which is acceptable to both parties with supporting law to ensure access for VIPs of a sensible licensing regime cannot be established. This is a pattern found in a number of legislations which can easily be adapted to this requirement.

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[1] Cornish, Graham P. Copyright management of document supply in an electronic age: the CITED solution. *Interlending & Document Supply*, 1993, 21 (2), 13-20.